

NTSB Order No.  
EM-17

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the National Transportation Safety Board  
at its office in Washington, D. C.,  
on the 1st day of September 1971.

CHESTER R. BENDER, Commandant of the United States Coast Guard

vs.

JORGE VELAZQUEZ

Docket ME-19

OPINION AND ORDER

The appellant, Jorge Velazquez, has appealed from the decision of the Commandant affirming the revocation of his merchant mariner's document (No. Z-817650-D2) and all other seaman's documents for misconduct while serving, under the authority of his documents, as a night steward aboard the SS SANTA MARIANA, a merchant vessel of the United States.<sup>1</sup>

The Commandant's action was taken on the appellant's appeal (Appeal No. 1812) from the initial decision of Coast Guard Examiner Martin J. Norris, following a full evidentiary hearing.<sup>2</sup> Throughout the proceedings herein, appellant has been represented by counsel.

The examiner found that on August 30, 1968, the appellant had assaulted a fellow crewmember, Jack Beilenson, with a knife, and thereafter on September 12, 1968, assaulted another crewmember, Salvador Amador, inflicting injuries with his fist and a knife. Both Beilenson and Amador testified that the attacks upon them by the appellant took place within the confines of their respective staterooms aboard the vessel, while no one else was present. It is undisputed that both individuals lodged prompt complaints against

---

<sup>1</sup>The revocation action of the Commandant was pursuant to 46 U. S. C. 239(g) and is appealable to this Board under 49 U.S.C. 1654(b)(2). The Board's rules of procedure governing such appeals are set forth in 14 CFR Part 425.

<sup>2</sup>Copies of the decisions of the examiner and the Commandant are attached hereto.

the appellant aboard ship, although there was an official logbook entry only with respect to Amador's accusation.

The examiner believed the complaining witnesses. He rejected appellant's testimony concerning the Beilenson incident, and his alibi that he and two other crewmembers, Cruz and Montes, were together in Monte's stateroom during the time Amador was attacked. Moreover, the examiner accepted the opinion evidence of the ship's doctor, associating a moderate intake of alcohol, admitted by the appellant as to the Amador incident, with a propensity toward violence on his part. The examiner found that this constituted a satisfactory explanation for this "unprovoked" attack.

In the examiner's view, the appellant was shown to be "an individual subject to uncontrollable impulses and vicious tendencies," who threatened the safety of others aboard ship. Accordingly, despite his good prior disciplinary record in the merchant marine, the examiner concluded that his misconduct was such as to warrant revocation.

The appellant here relies on his brief filed with the Commandant, wherein he contended that the decision of the examiner is contrary to the weight of the evidence; the offenses alleged were unrelated and thus improperly joined; and the sanction is excessive in view of his good prior record. Counsel for the Commandant has not filed a brief in reply.

Upon consideration of appellant's brief and the entire record, the Board concludes that the burden of proving his misconduct was met and the examiner's findings are supported by a preponderance of the substantial, reliable, and probative evidence. We adopt the findings of the examiner and the Commandant as our own, to the extent not modified herein. Moreover, we agree that revocation is warranted under 46 U. S. C. 239(g) and applicable Coast Guard regulation issued thereunder.<sup>3</sup>

---

<sup>3</sup>46 CFR Section 137.03-5 provides, in pertinent part, as follows:

"§ 137.03-5      Offenses for which revocation of licenses or documents is sought.

(a) The Coast Guard will initiate administrative action seeking revocation of licenses, certificates or documents held by persons who have been involved in acts of such serious nature that permitting such persons to sail under their licenses, certificates and documents would be clearly a threat to the safety of life or property.

Whether the appellant threatened Beilenson with a knife, as Beilenson testified, was solely a question of credibility. There was no other eyewitness testimony. The appellant admitted that they had had "some argument" in the stateroom they shared aboard the vessel, and that during the argument, he had blamed Beilenson for causing the death of his bird by use of the stateroom air conditioning. Beilenson testified that appellant held the point of a switchblade knife to his neck and demanded \$10 in restitution, which amount he gave him. In appellant's version of the incident, Beilenson volunteered to pay him the money, but never did so. While appellant denied using a knife, the chief steward corroborated Beilenson's prompt complaint to him, accusing the appellant of doing so, and further testified that the complaint was not logged due to the lack of witnesses.

Appellant makes two points in arguing that the weight of the evidence is against Beilenson's testimony. The first is that the chief steward failed to corroborate it by testifying that he "couldn't really see" a mark Beilenson claimed was made by the knife on his neck. This is quickly disposed of, since the elements of battery and injury to Beilenson were neither alleged nor found proved. We need not be concerned with the sufficiency of the corroborative evidence on this minor aspect of his testimony.

The fact that the offense was not logged aboard ship is also represented as a bar to the subsequent misconduct action by the Coast Guard. No authority is cited for this novel argument; we are aware of none; and, despite the inaction of shipboard authorities, we hold the offense of assault with a knife actionable under 46 U. S. C. 239(g). Neither upon the grounds asserted by the appellant, nor upon our independent review of the record, are we persuaded of any reason to disturb the credibility findings of the examiner and his determination, based on all the evidence, that appellant committed the offense alleged in this instance.

---

(b) These offenses, which are deemed to affect safety of life at sea, the welfare of seamen or the protection of property aboard ship, are:

- (1) Assault with dangerous weapon (injury)."

46 CFR Section 137.20-165 gives a table of disciplinary sanctions for various types of seamen's offenses "for the information and guidance of examiners." Assault with a dangerous weapon (injury) is listed as warranting the sanction of revocation on the first offense.

Concerning the attack upon Amador, the appellant again challenges the credibility of the complaining witness. Amador testified that after falling asleep in his bunk, he suddenly became aware that the appellant was in the room, and the latter instantly punched him in the face, threw him to the floor, and continued to beat him. He also exhibited a 4-inch leg scar sustained by means of "something" appellant "pulled out...from his pocket" (Tr. p. 34). The episode lasted 3 or 4 minutes, according to Amador, after which the appellant ran from the room. Amador went straightaway to the bridge and reported appellant's actions to the master. This was timed in the ship's log at 3:20 p.m.

It is first argued that Amador's identification is not to be believed because the appellant and two "disinterested" witnesses gave positive testimony that they were in another stateroom from 2:30 to 3:30 p.m., that day. The reliance on mere numerical superiority is misplaced, since it is the demeanor of witnesses and the quality of their testimony that will govern in making determinations on credibility. The record reflects no objective evidence to support their stories. It is simply their collective word against Amador's, and the quality of their testimony is not such as to impress us that the examiner erred in making his credibility findings. On the contrary, we find the reliability of these witnesses may be called into question. For example, Montes was absolutely sure that the vessel was in the port of Santo Domingo, in the Dominican Republic, whereas, actually the port was Cartagena, Colombia (Tr. p. 12). In another instance, Cruz stated positively that at 3:35 p.m., Amador appeared in the messroom looking as if he had been in a fight and blaming everyone there present for attacking him (Tr. p. 27-29). While this is argued as showing the unreliability of Amador's identification, the adverse inference really bears upon Cruz, since the thrust of all the evidence would indicate that Amador was being treated for his wounds by the ship's doctor at the time.

We agree with the Commandant's disposition of two other arguments made by appellant, viz., that there was no evidence as to how he entered Amador's room since Amador testified it was locked, and that the opinion of the ship's doctor should be disregarded due to "uncorroborated facts" on which it was based and his lack of professional experience. The appellant had possession of the master key during his duty hours as a night steward. While the regular practice was for appellant to return the master key to the chief steward at 7 a.m., the chief steward's testimony indicates that the practice was rather loose. Moreover, the appellant unquestionably had continuing access to the key, and it may be inferred that there were many opportunities for duplicates to be produced and retained by him. We find sufficient evidence to establish that appellant could have entered Amador's room.

The ship's doctor had treated Amador for his injuries. Shortly thereafter he interviewed the appellant, who admitted having a few beers earlier that day, and advised him that he was being accused of the attack on Amador. Appellant "seemed confident," and replied, "you have no proof." Based on the viciousness of the attack, on appellant's mild intoxication, and the "suaveness, the confidence, the defensiveness, the over-courtesy with which he reacted to the investigation of the matter" (Tr. pp. 115-118), the doctor gave the following opinion of the behavioral pattern exhibited by the appellant:

"Pathological intoxication is, in fact, characterized by impulsive aggressive behavior in the wake of minimal intake of alcohol. Had the man been drunk I would have been far less apprehensive than I was under the circumstances.... That is the clinical picture of the entity, a man who normally walks within the channels of social acceptable behavior but who seems, on certain occasions, involved in disastrous outbursts of aggressiveness when he has taken some alcohol - - even of a low content alcohol beverage." (Tr. p. 128)

We find the doctor's qualification, as reflected from the record in the decisions of the examiner and Commandant, and the observed factors upon which he based his opinion, clearly sufficient for purposes of this case. (Cf., O'Kon v. Roland, 247 F. Supp. 743 (S. D. N. Y., 1965)).

Appellant's remaining arguments warrant only brief comments. He argues in one instance that Amador claimed the assault was witnessed by another seaman, one Mendez. He misstates the evidence. The latter testified that he had fallen asleep in the messhall and, hearing a noise in the passageway, looked out and saw nothing. Amador testified only that he saw Mendez in the passageway after the attack. No conflict in their testimony is apparent from the record.

It is further argued that the bringing of separate offenses against two seamen under one charge of misconduct, constitutes error. No showing of prejudice is made and we perceive none.<sup>4</sup> Moreover, from an independent review of the record, we find that the examiner had no difficulty sifting the evidence and keeping separate that which was relevant to each offense. The argument is

---

<sup>4</sup>The Commandant found that, by separately alleging the beating and the cutting of Amador, one offense had been split improperly into two offenses. While this was technical error, it was not raised by appellant and we agree with the Commandant that it was harmless in the context of this appeal.

without merit.

Finally, we are not persuaded to reduce the sanction. We have weighed appellant's prior clear record with the Coast Guard against his misconduct herein, which involved serious injuries to a fellow seaman by unprovoked, surprise attack. The probability appears that he is prone to violence in a state of moderate intoxication. In this balance, the favorable factor of his prior record cannot prevail. We agree with the examiner that the safety of other seamen would continue to be imperiled by appellant's presence within the shipboard environment.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it is hereby denied; and
2. The order of the Commandant affirming the examiner's revocation of appellant's seaman's documents under authority of 46 U. S. C. 239(g) be and it hereby is affirmed.

REED, Chairman, LAUREL, THAYER, and BURGESS, Members, concurred in the above opinion and order. McADAMS, Member, was absent, not voting.

(SEAL)